

## **DECISION MEMO**

### **For Renewal of a Special Use Permit To Conduct Commercially Guided Helicopter Skiing In the Allen Glacier to Cleave Creek Area**

**Cordova Ranger District, Chugach National Forest  
Alaska Region  
USDA Forest Service**

## **BACKGROUND**

In November 2002, the Forest Service prepared an Environmental Assessment for Commercially Guided Helicopter Skiing in the Allen Glacier and Cleave Creek Area (Heli-ski EA) and Decision Notice and Finding of No Significant Impact (Heli-ski DN). The Heli-ski DN authorized guided helicopter skiing in seven regions on the Cordova Ranger District, encompassing 225,280 acres for a period of one year. This permit was subsequently renewed for a period of five years. The current permit will expire on 12/31/2009.

On 10/14/2008, H20 Heli-ski Guides requested a renewal of their permit for a period of ten years.

## **DECISION**

It is my decision to issue H20 Heli-Ski Guides a new special use permit, for a period of ten years, beginning 1/1/2010 and expiring in 12/31/2019, to replace their existing special use permit. The new permit will continue to allow for 600 priority use service days within the 87 persons at one time (PAOT) constraint in seven helicopter skiing units totaling 225,280 acres. The season of use will continue to be from February 1 through April 30.

Other than the duration of the permit, the new permit's terms and conditions will not differ from the existing permit. All design features, mitigation, and monitoring described in the Heli-Ski DN will continue for the duration of this new permit. In issuing a 10-year permit, the expectation is that there will be an increased need to make periodic adjustments to the details of this permit's administration in order to ensure the highest level of safety, performance and customer satisfaction.

## **RATIONALE for the DECISION**

I based my decision on five considerations: (1) Consistency with Forest Service National Environmental Policy Act (NEPA) directives regarding categorical exclusions; (2) Consistency with Forest Service directives regarding conversion of special use permits to a ten year term; (3) Evaluation of monitoring efforts described in the Heli-Ski DN; (4) The performance of the existing operator and (5) Public comment and input.

### ***Rationale for Category and Finding of No Extraordinary Circumstances.***

Forest Service NEPA regulations allow an action to be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) if there are no extraordinary circumstances related to the proposed action and if:

1. The proposed action is within one of the categories established by the Secretary at 7 CFR part 1b.3; or
2. The proposed action is within a category listed in § 220.6(d) and (e).

This decision is within the scope of 36 CFR § 220.6(e)(15), which allows for:

Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

This decision is within this category because it will only replace the existing H20 Heli-Ski Guides's permit with a new term. The new permit's terms and conditions will not differ from the existing permit. The new term of H20 Heli-Ski Guides's permit is considered administrative, as the dominate mechanisms controlling the scope and intensity of H20 Heli-Ski Guides's use of National Forest System (NFS) lands is through service days, PAOTs, regions available for helicopter skiing, monitoring, and mitigation measures; none of which change under this decision.

In addition, a review of scoping and the Heli-ski EA did not identify any extraordinary circumstances related to this decision on the seven resource conditions identified in 36 CFR §220.6(b). These resource conditions are discussed below:

- (1) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species.  
It is possible that TEPS plant or animal species may be found in the proposed project area. However, because the authorization only allows use in the winter, the chances of encounter are slight. No threatened, endangered or sensitive wildlife species will be affected by this decision (Heli-ski EA pp. 67 through 69; Heli-ski DN pg. 13).
- (2) Flood plains, wetlands, or municipal watersheds.  
Over the snow operations, such as helicopter skiing, have minimal impact to wetlands or floodplains and standard fuel spill prevention, containment and cleanup materials are required in fueling areas (Heli-ski EA pg. 61 and Heli-ski DN pg. 3).
- (3) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.  
None of the permit area includes wilderness, wilderness study areas, or national recreation areas (Heli-ski EA pp. 9 through 10 and pg. 42; Heli-ski DN pg. 8).
- (4) Inventoried roadless areas.  
The entire permit area is within inventoried roadless areas. However, helicopter skiing is not prohibited by the 2001 Roadless Rule (36 C.F.R. part 294) and helicopter skiing will have

little effect on the character of the roadless environment (Heli-ski EA pp.9 through 10 and pg. 42; Heli-ski DN pg. 8 and pg.13).

(5) Research natural areas.

None of the permit area includes research natural areas.

(6) American Indians and Alaska Native religious or cultural sites.

No American Indian or Alaska Native religious or cultural sites will be affected by the permit (Heli-ski EA pg. 58).

(7) Archaeological sites, or historic properties or areas.

No archaeological sites or historic properties or areas will be affected by the permit (Heli-ski EA pg. 58).

For the above reasons, I have determined that this decision falls within a category of administrative actions that can be categorically excluded from documentation in an EIS or EA and no extraordinary circumstances exist.

***Consistency with Special Use Permit Directives***

The Forest Service regulates occupancy and use of National Forest System (NFS) lands by outfitters and guides (O&G) through issuance of special use permits. Until April 2005, special use permits were issued for a maximum term of five years. In April 2005, Forest Service policy was revised to extend the maximum term to ten years (see Final Directive, Federal Register Vol. 70, No. 71, April 14, 2005). The directive documenting this revision cited three reasons:

- (1) To Support Small Business – The longer term provides greater business continuity for planning and investing, reducing an identified constraint to small business sustainability.
- (2) To Streamline Special Use Administration – The longer term decreases Forest Service administrative costs by reducing the analysis and processing required before issuing special use authorizations.
- (3) To Be Consistent with Other Agencies – The longer term is consistent with the permitting policies of the Bureau of Land Management and the National Park Service, which is important because many O&G operations include lands administered by more than one of these agencies.

This direction was incorporated into the Forest Service Handbook, 2709.11 – Special Uses Handbook, Chapter 40 – Special Uses Administration, 41.53 Outfitters and Guides, 41.53j Permit Terms and Conditions, point 1, which reads: “For new applicants, authorize use for up to 1 year. For holders assigned priority use, use may be authorized for up to ten years.”

The Forest Service’s revised special use permit directives allow for special use authorizations for a term of ten years provided certain conditions are met, including: (1) the permit holder must be authorized priority use; and (2) the permit holder must demonstrate compliance with the terms and conditions of the permit authorizing the priority use.

H20 Heli-Ski Guides currently holds priority use 600 service days and has received an “acceptable” rating on their annual performance evaluations every year they have operated on the Chugach National Forest. In addition, H20 Heli-Ski Guides has stated that a ten year permit will allow for

greater business continuity for planning and investing. Therefore, I feel that this decision is consistent with the purposes of the revised special use policy.

### ***Monitoring Results***

An important part of this decision is the continuation of the monitoring program described in the Heli-ski DN. This monitoring program will continue to evaluate whether this decision is being implemented as described and to modify permit areas in response to any changes in suitable goat habitat or population locations (see Heli-ski EA pg. 22 and Heli-ski DN pg. 12). To date, monitoring information indicates that H2O Heli-Ski Guides is operating within the terms and conditions of their special use authorization. In addition, goat monitoring will continue to ensure that goats are not adversely affected by helicopter skiing by modifying permit boundaries.

### ***Acceptable Performance of the Permit Holder***

H2O Heli-Ski Guides have received an “acceptable” rating on their performance evaluation every year they have operated under their permit and have consistently demonstrated that they are capable of operating within the terms and conditions of the special use permit.

### ***Public Comment***

Public comment indicates that there is a demand for helicopter skiing opportunities on the Chugach National Forest. My decision will allow for this opportunity to continue.

## **INTERESTED AND AFFECTED AGENCIES, ORGANIZATIONS, AND PERSONS**

In June 2001, a letter seeking public comment on helicopter skiing in project area was mailed to adjacent landowners; including, State, Federal, and private landowners and to people who had expressed an interest in helicopter skiing operations. In addition, the Heli-Ski EA was made available for public review in October 2002.

On December 10, 2008 internal scoping of Forest Service Resource specialists was conducted for any concerns or changed circumstances that were not identified in the Heli-Ski EA. No concerns were expressed.

On April 12, 2009 the Forest Service invited public comment through notice in the Cordova Times, the Valdez Star, and the Anchorage Daily News. The scoping period was open for 21 days and closed April 3, 2009. There were 59 comments received. All but one comment came from one of three helicopter skiing companies, their guides or their clients. A common theme within public comments was the desire or need for additional helicopter skiing opportunities. A summary of public comment and responses to those comment are included in the project file. Based on public comment, it is my intent to explore whether there are additional opportunities for helicopter skiing on the Chugach National Forest.

## **OTHER FINDINGS REQUIRED BY LAW**

**Chugach Land and Resource Management Plan (Forest Plan), as amended.** The decision continues implementation of a selected alternative that is consistent with the Forest Plan (Heli-ski DN p. 3). The skiing units are also located within areas open to helicopter use. Implementation of this decision does not require an amendment to the Forest Plan.

**ANILCA Section 810, Subsistence Evaluation and Finding.** The effects of this project have been evaluated to determine potential effects on subsistence opportunities and resources. There is no documented or reported subsistence use that would be restricted as a result of this decision.

**Bald Eagle Protection Act.** Management activities within bald eagle habitat will be in accordance to a Memorandum of Understanding (2/26/02) between the Forest Service and the U.S. Fish and Wildlife Service.

**Clean Water Act.** The project design is in accordance with Forest Plan standards and guidelines, Best Management Practices, and applicable Forest Service manual and handbook direction. The project activities are expected to meet all applicable State of Alaska water quality standards.

**Clean Air Act.** Emissions anticipated from the implementation of the Selected Alternative would be of short duration and would not be expected to exceed State of Alaska ambient air quality standards (18 AAC 50).

**Coastal Zone Management Act of 1972, as amended.** The Coastal Zone Management Act requires the Forest Service, when conducting or authorizing activities or undertaking development directly affecting the coastal zone, to ensure that the activities or development be consistent with the approved Alaska Coastal Management program to the maximum extent practicable. In accordance with Section 302 of the "Memorandum of Understanding between the State of Alaska and the USDA Forest Service, Alaska Region, on Coastal Zone Management Act/Alaska Coastal Management Program Consistency Reviews (FS Agreement No.00MOU-111001-026, effective March 2, 2000), this decision does not require a consistency determination with the Coastal Zone Management Act.

**Endangered Species Act.** Biological evaluations were completed for threatened, endangered, proposed, and sensitive plant and animal species. No threatened or endangered plant or animal species would be affected by this activity.

**Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended.** The Magnuson-Stevens Fishery Conservation Act (the Act) requires that all federal agencies consult with the National Marine Fisheries Service (NMFS) when any project "may adversely affect" essential fish habitat (EFH). The Act also requires that agencies with existing consultation processes contact NMFS to discuss how the existing processes can be used to satisfy the EFH consultation requirements (50 CFR 600.920(e)(3)). None of the activities will cause any action that may adversely affect EFH as defined by this Act.

**Migratory Bird Treaty Act.** There will be no impacts to migratory bird populations. I find that the this decision complies with the Migratory Bird Treaty Act.

**National Historic Preservation Act of 1966.** Section 106 of the National Historic Preservation Act requires that all federal undertakings follow the regulations found at 36 CFR 800 to identify and protect cultural resources that are within project areas and which may be affected by projects. The Chugach National Forest will follow the procedures in the Programmatic Agreement among the Chugach National Forest, the Advisory Council on Historic Preservation, and the Alaska State Historic Preservation Office. A project-specific inventory of the activity areas has been conducted. Primarily because operations take place over snow, the project has been designed to avoid sites or mitigate the effects of the project on sites; therefore, the Selected Alternative will be consistent with the National Historic Preservation Act, the American Indian Religious Freedom Act and the Native

American Grave Protection Act.

**Executive Order 11988 – Wetlands.** Wetlands occur in the project area. However, design features such as an over-the-snow operation, will minimize the impact to wetlands in accordance with E.O. 11988.

**Executive Order 11990 – Floodplains.** Floodplains occur in the project area. However, design features such as an over-the-snow operation, will minimize the impact the impact to floodplains in accordance with E.O. 11990.

**Executive Order 12962 - Recreational Fisheries.** No major adverse effects to freshwater or marine resources would occur with implementation of this project.

**Executive Order 13112 - Invasive Species.** Invasive species populations have the potential to spread in the project area. Over the snow operations will minimize the spread of invasive species in accordance with E.O. 13112.

**Executive Order 12898 - Environmental Justice.** Implementation of this project is not anticipated to cause disproportionate adverse human health or environmental effects to minority or low-income populations.

## **IMPLEMENTATION**

Implementation of this decision may occur immediately. This action falls within a category of actions that are not subject to appeal (36 CFR §215.8).

## **CONTACT PERSON**

For further information, contact Bruce Campbell at the Cordova Ranger District, Chugach National Forest, 612 Second Street, Cordova, AK 99574-0280 or telephone 907-424-4726.

## **RESPONSIBLE OFFICIAL**



Teresa M. Benson  
Cordova District Ranger

August 27, 2009  
Date